

**THE MINUTES OF THE REGULAR CITY COUNCIL MEETING HELD
MONDAY, JUNE 23, 2003 AT 1:30 P.M.**

The Meeting was called to order at 1:30 p.m. Present: Council Chairperson Camp; Council Members: Friendt, McRoy, Newman, Svoboda, Werner; Joan Ross, City Clerk. Absent: Cook.

Council Chair asked all present to stand and recite the Pledge of Allegiance and reflect for a moment of silent meditation.

READING OF THE MINUTES

FRIENDT Having been appointed to read the minutes of the City Council proceedings of June 16, 2003, reported having done so, found same correct.

Seconded by Svoboda & carried by the following vote: AYES: Camp, Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.

PUBLIC HEARING

MANAGER APPLICATION OF CRYSTAL J. MCCARTHY FOR B&R STORES, INC. DBA "RUSS'S MARKET" AT 6300 HAVELOCK AVE. - Crystal J. McCarthy, 5625 Franklin Street, came forward and took the oath to answer questions posed by Council.

This matter was taken under advisement.

SPECIAL PERMIT 617B - APPLICATION OF SUTTER PLACE PARTNERS TO AMEND THE SUTTER PLACE APARTMENTS COMMUNITY UNIT PLAN TO REVISE THE BUILDING ENVELOPES ON PROPERTY GENERALLY LOCATED AT SOUTH 48TH STREET AND CLAIRE AVENUE - Gus Ponstingl, Ross Engineering, 650 J Street, Suite 210, came forward in favor of this item.

This matter was taken under advisement.

CHANGE OF ZONE 3290 - APPLICATION OF CARL R. SCHMIDT FOR A CHANGE OF ZONE FROM AGR AGRICULTURAL RESIDENTIAL TO R-1 RESIDENTIAL ON PROPERTY GENERALLY LOCATED AT OLD CHENEY ROAD AND FRONTIER ROAD. (In connection W/03R-145) (6/9/03 - Con't P.H. & delay Action 2 wks to 6/23/03);

ACCEPTING AND APPROVING THE PRELIMINARY PLAT OF FRONTIER MEADOWS CONSISTING OF 3 RESIDENTIAL LOTS WITH WAIVERS TO THE REQUIRED STREET PAVING AND STORMWATER DRAINAGE ON PROPERTY GENERALLY LOCATED AT OLD CHENEY ROAD AND FRONTIER ROAD. (In connection w/03-92) (6/9/03 - Con't P.H. & delay Action 2 wks to 6/23/03) - Kent Seacrest, Seacrest & Kalkowski, 1111 Lincoln Mall, Suite 350, representing Carl Schmidt, came forward to explain the reasons for this special permit. Everything has been agreed upon with staff except for the issue of the streets, where the neighborhood would like to have the rural roads instead of the urban designed roads with curb and gutters. He told Council that the other sub-neighborhoods, Southfork and Hawkswood Estate in this same area have the rural roads. This area is still waiting for sewer lines from the City. There is currently an acreage study being done to compliment the Comprehensive Plan that should be complete in the next couple of months.

Councilman Werner asked Mr. Seacrest if he could foresee in the future where the streets would need to be upgraded to urban standards. Mr. Seacrest stated he hoped one hundred years from now we have a whole different transportation system.

Councilman Friendt commented that we are changing from five acre to one acre lots and subdividing and expanding the use. Mr. Seacrest replied that density situation in this given area will not cause a lot of traffic. Mr. Friendt also inquired about the build-through policy and if this particular area would fit that standard. Mr. Seacrest stated that this would fit this area due to the three acres developments and the city would divide this into this into one-acre size lots for the sewer usage. Mr. Friendt asked what would happen in the future when a

new buyer comes along, who might say they want paved streets. Mr. Seacrest clarified what the type of paving would be like. He stated the

only concern is whether there will be curb or gutter. It is possible that another owner would want the change, but when they find out the cost assessed to them for the curb and gutter, they will more than likely stay with the rural streets.

Councilman Svoboda asked if we could change the request into a community unit plan, thus just having private roads and keep the aspect of you build it, you maintain it. Mr. Seacrest stated they had discussed this possibility and it would be a good recommendation for the purposes that if you want this style, perhaps private roadway is the way to go. The dilemma in this case is that we have been here for ten months processing this. If we go with private roadways now, we would have to go back to square one and that could be an additional five months. Another person called Mr. Svoboda and asked why should there be an exemption to this, because when he built his house or bought his lot, he had to pay for curb, gutter and storm sewer and had no option, the city told him this is what you have to do. The point was the wealthy that could afford a one-acre lot in the City of Lincoln have the ability to ask for and receive, a waiver on this because they don't want to pay for curb and gutter. Mr. Seacrest replied that the Comp Plan calls for a variety of housing styles in Lincoln.

Mike Morossin, 2055 S Street, came forward in opposition.

Stan Malick, 6700 Pinecrest Drive, came forward in support.

Councilman Camp asked Mr. Malick about the future and dividing these lots into smaller parcels. Mr. Malick replied that they have strict covenants for this neighborhood of one acre minimums.

Gerald Bryant, 6101 Frontier Rd., came forward in support.

Jan Schwenke, 6061 Frontier Rd., came forward in support.

Larry Lewis, 5615 Hickory Crest Road, came forward in support. He also stated his client was willing to give the city easement to put in some sidewalks required. He told the Council that parking is provided by the owners themselves, due to the longer length of their driveways.

Councilman Werner asked Mr. Lewis why the standards should be different for this area. Mr. Lewis replied that you are taking a very small rural area and imposing city standards on a small piece. Mr. Werner stated that if at some point this does change if the future, aren't we passing this burden on to future home buyers and home owners? Mr. Lewis suggested that if at some point in the future that becomes a change, then assess the changes to the property owners.

Council Chair Camp asked about the compromise on sidewalks. Mr. Lewis said the home owners prefer not to put in sidewalks, but in the compromise with the City, the client is willing to provide an easement and put in sidewalks now or at some future date.

Arthur Zygielbaum, 6601 Pinecrest Road, came forward in support.

Craig Groat, 4935 Huntington, came forward in opposition

Judy Bryant, 6101 Frontier Road, came forward in favor.

Karl Frederickson, Public Works and Utilities, came forward to answer Council questions. He stated that the issue of Frontier Acres is to be an issue of fairness. Public Works feels that because this is now within the corporate city limits, and in fairness to the taxpayers of Lincoln, maintenance will be an issue. Also each time a new home owner comes into that area, they potentially expect different things in the way of streets.

Council Chair Camp asked if there was a way to maintain the rural standards, that some notification could be put with the Register of Deeds on the title of these acreages that would provide a notice to future home owner buyers, that when they are subdivided into small lots, they would become responsible for complying with urban standards.

Roger Figard, Public Works and Utilities Engineering, came forward and stated you could put a requirement in the future that urban component could be required more than likely through the assessment district. It could only be levied for those added benefits of which the entire pavement width would already be there so if you took out the rural asphalt, the rural section, moved it down, the only cost you could assess to the homeowner would be the curb and guttering. Given enough time, home ownership will change, there will be a growing expectation that we provide sidewalks, pedestrian movements and those things associated with a more dense environment. Mr. Camp asked if we review the control over changes when the acreages are made into smaller residential lots, would we not at that time have the ability to say, the requirement would be the lot owners pay the cost of upgrade to urban standards? Mr. Figard was not sure of the plat requirement to do one process now and then expect a different process later.

Ray Hill, Planning Dept., came forward to answer questions. The

protective covenants are private and the city is not a part of it. He was not sure of the procedure to change the covenants. Future subdivisions will give the City opportunity to say these are our standards and they will be required to meet it. The Planning Dept. would prefer to avoid the piecemeal standards.

Councilman Friendt asked Mr. Figard about deferring the future costs. Mr. Figard responded by saying that if the subdivision occurs and then the rest of the subdivision finishes out, anytime land is developed, the abutting property or the homeowners pay the initial cost of the installation of water, sewer and paving. Once that infrastructure is installed, then the responsibility to operate and maintain it comes back to the rest of the community through wheel tax, property tax and gas tax, depending on how it is funded.

Mr. Seacrest returned for rebuttal. At the Planning Commission we had compromised and we are showing sidewalks on our side of the street. We are proposing to put a concrete base of 6 inches and 2.5" of asphalt on top, thereby meeting city standards. We are asking to not have the curb and gutter and to go with the rural swells.

Councilman Svoboda asked if Mr. Seacrest could put into writing his proposals to amend this resolution. Mr. Seacrest responded that he would.

Councilman Friendt asked how this fits into the scheme of impact fees. Mr. Seacrest stated that impact fees were designed to take care of offsite arterial streets. Historically in Lincoln, the developer has always built the local street infrastructure.

Council Chair Camp asked when you propose the sidewalks, are you predisposing the other neighborhoods that are coming up next, to something that they may not agree with. Mr. Seacrest said that would be accurate, but the aesthetics and integrity of the neighborhood needs to be kept intact.

Ray Hill, Planning Dept. came forward to clarify the resolution as to where the sidewalks would be installed on Frontier Road or on Frontier Circle as well. Mr. Seacrest responded that the sidewalk on Frontier Road, on Old Cheney and one sidewalk on Frontier Circle which consists of three lots.

Nicole Fleck-Tooze of Public Works and Utilities came forward to clarify that the motion to amend is to make the resolution consistent with the Planning Commission recommendation, which was to waive curb and gutter on all the streets and so the resolution had previously just referred to Frontier Road and this now adds Frontier Circle.

This matter was taken under advisement.

MISCELLANEOUS BUSINESS

Bill Crawford, 105 N. 8th Street, came forward to inform Council that the conditions of transportation for the handicapped have improved. He indicated that Servant Cab now has 24 hour service with a mini van that has access for a wheel chair. Also StarTran offers Transport Plus at a reasonable free and Madonna will provide transportation that is authorized through Social Services if you schedule that one week in advance. He stated he would be willing to serve on a committee regarding transportation for the handicapped.

Craig Groat, 4935 Huntington Avenue, came forward to comment on the city having a manager rather than a mayor. He gave the Council members copies of a brochure regarding the association that other cities belong to and have this form of government. Mr. Groat also commented that the Old Fed Bldg. would be a perfect place for the Bennett Martin Library.

These matters were taken under advisement.

**** END OF PUBLIC HEARING ****

COUNCIL ACTION

LIQUOR RESOLUTIONS

MANAGER APPLICATION OF CRYSTAL J. MCCARTHY FOR B&R STORES, INC. DBA "RUSS'S

REGULAR MEETING

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MARKET" AT 6300 HAVELOCK AVE. - CLERK read the following resolution, introduced by Glenn Friendt, who moved its adoption for approval:
A-82163a WHEREAS, B&R Stores, Inc. dba "Russ's Market" located at 6300 Havelock Ave., Lincoln, Nebraska has been approved for a Retail Class "D" liquor license, and now requests that Crystal J. McCarthy be named manager;

WHEREAS, Crystal J. McCarthy appears to be a fit and proper person to manage said business.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That after hearing duly had as required by law, consideration of the facts of this application, the Nebraska Liquor Control Act, and the pertinent City ordinances, the City Council recommends that Crystal J. McCarthy be approved as manager of this business for said licensee. The City Clerk is directed to transmit a copy of this resolution to the Nebraska Liquor Control Commission.

Introduced by Glenn Friendt

Seconded by Svoboda & carried by the following vote: AYES: Camp, Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.

ORDINANCES - 2ND READING - NONE

RESOLUTIONS

APPLICATION OF NEBRASKA CHILDREN'S HOME SOCIETY FOUNDATION AT 3549 FONTENELLE BLVD., OMAHA, NEBRASKA TO CONDUCT A LOTTERY WITHIN THE CITY OF LINCOLN FROM JUNE 11, 2003 THROUGH AUGUST 16, 2003 - CLERK read the following resolution, introduced by Glenn Friendt, who moved its adoption:

A-82164 WHEREAS, Nebraska Children's Home Society Foundation has made application for a permit to conduct a raffle in the City of Lincoln pursuant to Chapter 9.32 of the Lincoln Municipal code; and

WHEREAS, said application complies with all of the requirements of Section 9.32.030 of the Lincoln Municipal Code.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That, after public hearing duly had as required by Section 9.32.050 of the Lincoln Municipal Code, the City council does hereby grant a permit to Nebraska Children's Home Society Foundation to conduct a raffle in the City of Lincoln in accordance with the application filed by Laura Schabloske Ilg. The City Clerk is directed to issue a permit upon the payment by the applicant of the required fee, said permit to be valid only for a specific raffles described in said application and only for a period of one year from the date of approval of this resolution. Said permit shall be subject to all of the conditions and requirements of Chapter 9.32 of the Lincoln Municipal Code.

BE IT FURTHER RESOLVED that pursuant to Section 9.32.080 of the Lincoln Municipal Code, a tax of 5% is imposed upon the gross proceeds received from the sale of raffle changes or tickets within the City of Lincoln, which tax shall be due no later than sixty (60) days after the conclusion of each raffle to be conducted hereunder, and if unpaid at that time, shall thereafter be delinquent.

Introduced by Glenn Friendt

Seconded by McRoy & carried by the following vote: AYES: Camp, Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.

APPOINTING TERRY WERNER TO THE JOINT BUDGET COMMITTEE TO FILL THE UNEXPIRED TERM OF COLEEN SENG EXPIRING AUGUST 31, 2003 - CLERK read the following resolution, introduced by Glenn Friendt, who moved its adoption:

A-82165 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the appointment of Terry Werner to the Joint Budget Committee to fill an unexpired term expiring August 31, 2003 is hereby approved.

Introduced by Glenn Friendt

Seconded by Newman & carried by the following vote: AYES: Camp, Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.

REAPPOINTING JONATHAN COOK TO THE PARKS AND RECREATION ADVISORY BOARD FOR A THREE-YEAR TERM EXPIRING APRIL 17, 2006 - CLERK read the following resolution, introduced by Glenn Friendt, who moved its adoption:

A-82166 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the reappointment of Jonathan Cook to the Parks and Recreation Advisory Board for a three-year term expiring April 17, 2006 is hereby approved.

Introduced by Glenn Friendt

Seconded by Svoboda & carried by the following vote: AYES: Camp, Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.

APPOINTING EDWARD WIMES TO THE CITY PERSONNEL BOARD FOR A FIVE-YEAR TERM EXPIRING JUNE 22, 2008 - CLERK read the following resolution, introduced by Glenn Friendt, who moved its adoption:

A-82167 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the appointment of Edward Wimes to the Personnel Board for a five-year term expiring June 22, 2008 is hereby approved.

Introduced by Glenn Friendt

Seconded by Svoboda & carried by the following vote: AYES: Camp, Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.

SPECIAL PERMIT 617B - APPLICATION OF SUTTER PLACE PARTNERS TO AMEND THE SUTTER PLACE APARTMENTS COMMUNITY UNIT PLAN TO REVISE THE BUILDING ENVELOPES ON PROPERTY GENERALLY LOCATED AT SOUTH 48TH STREET AND CLAIRE AVENUE - CLERK read the following resolution, introduced by Glenn Friendt, who moved its adoption:

A-82168 WHEREAS, Sutter Place Partners has submitted an application designated as Special Permit No. 617B for authority to amend Sutter Place Apartments Community Unit Plan by revising the building envelopes on property located at South 48th Street and Claire Avenue, and legally described to wit:

Lot 150 I.T. located in the Southwest Quarter of
Section 8, Township 9 North, Range 7 East of the 6th
P.M., Lincoln, Lancaster County, Nebraska;

WHEREAS, the real property adjacent to the area included within the site plan for this community unit plan will not be adversely affected; and

WHEREAS, said site plan together with the terms and conditions hereinafter set forth are consistent with the intent and purpose of Title 27 of the Lincoln Municipal Code to promote the public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the application of Sutter Place Partners, hereinafter referred to as "Permittee", to amend Sutter Place Apartments Community Unit Plan by revising the building envelopes, on the property legally described above, be and the same is hereby granted under the provisions of Section 27.63.320 and Chapter 27.65 of the Lincoln Municipal Code upon condition that construction and operation of said revised community unit plan be in strict compliance with said application, the site plan, and the following additional express terms, conditions, and requirements:

1. This permit approves 104 dwelling units.
2. The Permittee must submit an acceptable revised and reproducible final plan and six copies.
3. The construction plans must conform to the approved plans.
4. Before occupying the dwelling units all development and construction must be completed in conformance with the approved plans.
5. All privately-owned improvements must be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.

6. The site plan approved by this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.

7. The terms, conditions, and requirements of this resolution shall be binding and obligatory upon the Permittee, its successors, and assigns. The building official shall report violations to the City Council which may revoke the special permit or take such other action as may be necessary to gain compliance.

8. The Permittee shall sign and return the City's letter of acceptance to the City Clerk within 30 days following approval of the special permit, provided, however, said 30-day period may be extended up

to six months by administrative amendment. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the Permittee.

9. The site plan as approved by this resolution voids and supersedes all previously approved site plans, however, all resolutions approving previous permits remain in force unless specifically amended by this resolution.

10. Before receiving an occupancy permits, a sign identifying the emergency exit must be posted.

Introduced by Glenn Friendt

Seconded by Svoboda & carried by the following vote: AYES: Camp, Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.

ACCEPTING AND APPROVING THE PRELIMINARY PLAT OF FRONTIER MEADOWS CONSISTING OF 3 RESIDENTIAL LOTS WITH WAIVERS TO THE REQUIRED STREET PAVING AND STORMWATER DRAINAGE ON PROPERTY GENERALLY LOCATED AT OLD CHENEY ROAD AND FRONTIER ROAD. (In connection w/03-92) (6/9/03 - Con't P.H. & delay Action 2 wks to 6/23/03)

MCROY Moved to amend Bill No. 03R-145 in the following manner:

On Page 2, line 2, after the words "Frontier Road" insert and Frontier Circle.

Seconded by Svoboda & carried by the following vote: AYES: Camp, Friendt, McRoy, Svoboda, Werner; NAYS: None; ABSTAINING: Newman; ABSENT: Cook.

SVOBODA Moved to amend Bill No. 03R-145 in the following manner:

On Page 2, line 2, after the words "cross section" insert provided that, the developer will be required to meet the City Design Standard 3.7.3.1 Portland Cement Concrete Pavement or 3.7.3.2 Asphaltic Concrete Pavement, Class I. For the rural roadways.

WERNER Added a friendly amendment to continue the previous sentence with the following:

and meet the City of Lincoln's design profile to the satisfaction of the Director of Public Works.

Seconded by McRoy & carried by the following vote: AYES: Camp, Friendt, McRoy, Svoboda, Werner; NAYS: None; ABSTAINING: Newman; ABSENT: Cook.

CLERK Read the following resolution, introduced by Ken Svoboda, who moved its adoption as amended:

A-82169 WHEREAS, Carl R. Schmidt has submitted the preliminary plat of Frontier Meadows for acceptance and approval; and

WHEREAS, the Lincoln City - Lancaster County Planning Commission has reviewed said preliminary plat and made recommendations as contained in the letter dated , which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the preliminary plat of Frontier Meadows, located at Old Cheney Road and Frontier Road as submitted by Carl R. Schmidt is hereby accepted and approved, subject to the terms and conditions set forth in Exhibit "A", which is attached hereto and made a part of this resolution as though fully set forth verbatim.

BE IT FURTHER RESOLVED that the City Council finds that the tract to be subdivided is surrounded by such development or unusual conditions that strict application of the subdivision requirements would result in actual difficulties or substantial hardship and the following modifications to the subdivision requirements are therefore approved:

1. The requirement of Section 4.2 of the Street Lighting Design Standards regarding the standard spacing of street lights is hereby modified to increase the spacing of street lights from 200' to 500'.

2. The requirement of Section 26.27.020 requiring sidewalks on both sides of all streets within the subdivision is hereby modified to permit sidewalks on one side only of interior streets.

3. The requirement of Section 26.27.010 of the Land Subdivision Ordinance requiring Frontier Road and Frontier Circle to be paved with curb and gutters is hereby waived and to allow a rural roadway cross section; provided that, the developer will be required to meet the City Design Standard 3.7.3.1 Portland Cement Concrete or 3.7.3.2. Asphaltic concrete Pavement, Class I for the rural roadways, and meet the city of Lincoln's design profile tot he satisfaction of the Director of Public Works.

4. The requirement of the Stormwater Drainage Design Standards that the minor storm drainage be conveyed in storm sewers is hereby

waived to allow the roadside ditches to carry the stormwater rather than storm sewer; provide that the abutting property owners are responsible for the maintenance of the roadway side ditches and the culverts.

Introduced by Ken Svoboda

Seconded by Friendt & carried by the following vote: AYES: Camp, Friendt, McRoy, Svoboda, Werner; NAYS: None; ABSTAINING: Newman; ABSENT: Cook.

SETTING THE HEARING DATE OF MONDAY, JULY 7, 2003 @ 1:30 P.M. FOR THE APP. OF HEIDELBERG SOUTH, INC. DBA HEIDELBERG'S SOUTH FOR A CLASS C LIQUOR LICENSE, LOCATED AT 1601 NORMANDY COURT - CLERK read the following resolution, introduced by Glenn Friendt, who moved its adoption:

A-82170 BE IT RESOLVED by the City council, of the City of Lincoln, that a hearing date is hereby set for Mon. July 7, 2003 at 1:30 p.m. or as soon thereafter as possible in the City Council Chambers, County-City Building, 555 S. 10th St., Lincoln, NE, for the purpose of considering the Application of Heidelberg South, Inc. dba Heidelberg's South for a Class C Liquor License located at 1601 Normandy Court.

If the Police Dept. is unable to complete the investigation by said time, a new hearing date will be set.

Introduced by Glenn Friendt

Seconded by Svoboda & carried by the following vote: AYES: Camp, Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.

PETITIONS & COMMUNICATIONS

3 FORMAL PETITIONS FOR ORNAMENTAL LIGHTING DISTRICT #286 AT 27TH STREET TO 20TH STREET, VAN DORN STREET TO HIGH STREET SUBMITTED BY ERIC M. MOELLERING, SCOTT BROWN AND CURT AND MARCIA YOST - CLERK presented said petition which was referred to the Law Dept.

INFORMAL PETITION FOR THE CREATION OF A REPAVING DISTRICT FOR INDUSTRIAL AVENUE AND DAN AVENUE SUBMITTED BY GARY BUTTS - CLERK presented said petition which was referred to the Public Works Dept.

REPORTS OF CITY OFFICERS

INVESTMENT OF FUNDS FOR THE WEEK OF JUNE 9 THROUGH JUNE 13, 2003 - CLERK read the following resolution, introduced by Glenn Friendt, who moved its adoption:

A-82171 BE IT HEREBY RESOLVED BY THE CITY COUNCIL of the City of Lincoln, Nebraska:

That the attached list of investments be confirmed and approved, and the City Treasurer is hereby directed to hold said investments until maturity unless otherwise directed by the City Council.

Introduced by Glenn Friendt

Seconded by Svoboda & carried by the following vote: AYES: Camp, Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.

CLERK'S LETTER & MAYOR'S APPROVAL OF ORDINANCES AND RESOLUTIONS PASSED BY COUNCIL ON JUNE 16, 2003 - CLERK presented said report which was placed on file in the Office of the City Clerk.

REPORT OF CITY TREASURER OF MONTHLY CITY CASH REPORT FOR THE MONTH OF JUNE, 2003 - CLERK presented said report which was placed on file in the Office of the City Clerk. (5-21)

ORDINANCES - 1ST READING

CREATING ALLEY PAVING DISTRICT NO. 362 IN THE EAST/WEST ALLEY FROM 48TH TO 49TH STREETS BETWEEN LOWELL AND MEREDETH AND ASSESSING THE COSTS THEREOF AGAINST THE BENEFITTED PROPERTIES - CLERK read the following ordinance, introduced by Glenn Friendt, creating Alley Paving District No. 362 in the east/west alley from 48th to 49th Streets between Lowell and Meredith and assessing the costs thereof against the benefitted properties, the first time.

ORDINANCES - 3RD READING

CHANGE OF ZONE 3290 - APPLICATION OF CARL R. SCHMIDT FOR A CHANGE OF ZONE FROM AGR AGRICULTURAL RESIDENTIAL TO R-1 RESIDENTIAL ON PROPERTY GENERALLY LOCATED AT OLD CHENEY ROAD AND FRONTIER ROAD. (In connection W/03R-145) (6/9/03 - Con't P.H. & delay Action 2 wks to 6/23/03) - CLERK read the following ordinance, introduced by Annette McRoy, for Change of Zone 3290, application of Carl R. Schmidt for a Change of zone from AGR Agricultural Residential to R-1 Residential on property generally located at Old Cheney Road and Frontier Road, the third time.

MCROY Moved to pass the ordinance as read.

Seconded by Svoboda & carried by the following vote: AYES: Camp, Friendt, McRoy, Svoboda, Werner; NAYS: None; ABSTAINING: Newman; ABSENT: Cook.

The ordinance being numbered #18201 is recorded in Ordinance Book No.259, Page

RECONSIDERATION

APPLICATION OF METTLEN, INC. DBA JAX FOR A CLASS C LIQUOR LICENSE AT 2711 SOUTH 48TH STREET, #101 - MUST APPLY FOR A SPECIAL PERMIT TO SELL ON-SALE ALCOHOLIC BEVERAGES IN ACCORDANCE WITH SECTION 27.63.680 OF THE LINCOLN MUNICIPAL CODE - Ray Hill of Planning Dept. came forward to explain the zoning ordinance has two separate special permits for the sale of alcohol. One is for sale on premise and one for the sale off premise. We would rather not have the State of Nebraska issue a liquor license for on-sale when it is in violation of the city's zoning regulations. This would give the individual and opportunity to come forward and apply for a special permit for the on-sale.

Councilman Friendt asked Mr. Hill to explain the key regulations that are in place for this permit. Mr. Hill stated that the separation from residential district and day cares as 100' from the building and where the actual sale of the alcohol would occur.

Darrell Stock, 1115 K Street, #104, Attorney, representing Mr. Gene Podolak, owner of Jax Beverages, came forward. He proposed to Mr. Roper, the City Attorney, that the Liquor Commission will grant a license but they will not deliver it to the City Clerk until Mr. Podolak has passed all of the inspections. Mr. Podolak is converting this site into a neighborhood lounge to have on-sale of liquor. We will not be into these premises until Mr. Podolak has an occupancy permit.

Dana Roper, City Attorney, came forward and stated that the Council has recommended an approval to the Nebraska Liquor Commission and that is before them and unless this matter is reconsidered, presumably they will issue the license and the license will come to the City Clerk. The City Clerk will be faced with having a valid Nebraska Liquor License and no real reason to withhold the granting of that license when the applicant comes to the window to pay the money. To make sure Mr. Podolak complies with the city ordinance, then we need to reconsider because there is an issue of whether they will be granted a special permit. Mr. Roper stated that until the Planning Dept. has approved that mitigation, it would be our thought that the Council should not recommend that the license be issued.

Council Chair Camp asked if we reconsidered the item, would it be best to put this on the pending list? Mr. Roper replied that we would not be able to place it on pending. If we do not have a recommendation to the Commission, they will treat the matter as no recommendation and their practice is to issue the license then.

Councilman Svoboda stated the City missed the opportunity to catch this at several different levels. If we just allow this to go through to the Liquor Control Commission, the license is issued, comes back to the City Clerk, she can't forward it to the applicant without the approval of the Planning Dept, could we not start the process immediately by asking them to show mitigation or to show that there is mitigating circumstances? Mr. Stock replied that the Liquor Commission does not issue the license until all of the inspections have occurred. The South side of this place of business is a block wall 30' long, so the people on the residential side will never know if there is a change of activity because they are completely removed from this.

Councilman Friendt stated that the Health Dept. and Fire Dept. inspections are a practical matter of law. We are concerned with

policy, not understanding what we were supposed to be reconsidering. Do you run some risks down the road, as we revisit some of these policy issues? Mr. Stock agreed. He stated they didn't want to have to start the liquor application process over again.

Councilwoman Newman asked if this was put on fast track, what is the soonest that we could get through the whole process for the applicant? Mr. Hill responded that if they submit an application by Thursday, June 26th, they would be in front of the Planning Commission on July 23rd Agenda. If everything is complete at that time, then 19 days following that date, they could have a public hearing in front of the City Council again.

Joan Ross, City Clerk, commented that we do not want to get the Liquor License into the City Clerk's office prior to the special permit process being complete.

Councilwoman McRoy asked Mr. Hill if that is the fastest method of getting the special permit through is in two months? Mr. Hill agreed that it would be. Ms. McRoy commented if we did not reconsider, that would leave his application moving forward to the Liquor Commission and the license would be held up waiting for inspections, and there wouldn't be additional cost to the applicant and we could still go through our process? Mr. Roper replied that if we did nothing, it would be my understanding that the Liquor Commission would still issue the license. Mr. Podolak is grandfathered in for off-sale. He now wants to add on-sale and that will require a special permit.

Councilman Friendt asked if we could leave this stand while we process the special permit application. Mr. Roper indicated you could, but the liquor license will come over. Mr. Stock stated the danger would be that if they could pass all the inspections without the special permit, but I don't think so.

Gene Podolak, 5201 Topaz Ct., came forward and stated he had not started any kind of remodel because he is waiting for this process to be over. Mr. Podolak indicated that no one told him he needed a special permit.

Councilman Werner asked if Mr. Podolak wasn't able to have alcohol in his restaurant, would he do the remodel? Mr. Podolak indicated it would not be a restaurant; rather it will be a lounge setting. Mr. Podolak stated he has closed his liquor store already. So if this special permit does not go through, he is completely out of business. Mr. Werner stated that he was taking the chance. Mr. Podolak stated that he wasn't taking a chance yet. Mr. Werner said that he was assuming that he would get a special permit. We have turned a lot of those down and many that seem as reasonable in your mind. Mr. Podolak stated whatever Planning recommended and then with the Council's approval, and I don't plan to do anything until I get that clearance.

Investigator Russ Fosler, Lincoln Police Dept., came forward. He commented that the biggest danger that we have as a City, is that the liquor license could be issued without the special permit being completed. I don't know that we would have the right to hold that liquor license once the State has issued it. The over all cost of

starting over with the Liquor Control Commission would be \$25.00 and simply recopying the original application. Mr. Friendt indicated perhaps it would be two months extra. Mr. Fosler said that we (the City) has a 45 days to turn around applications. Mr. Stock indicated the City has a remedy, why would we open up a store without having a permit. Mr. Podolak is not going to spend that kind of money on the chance that this won't be approved.

This matter was taken under advisement.

MISCELLANEOUS BUSINESS

PENDING -

SVOBODA Moved to extend the Pending List to June 30, 2003.
Seconded by Cook & carried by the following vote: AYES: Camp, Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.

UPCOMING RESOLUTIONS -

REGULAR MEETING

June 23, 2003

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SVOBODA Moved to approve the resolutions to have Public Hearing on
 June 23, 2003.
 Seconded by Cook & carried by the following vote: AYES: Camp,
 Cook, Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.

ADJOURNMENT

3:53 P.M.

SVOBODA Moved to adjourn the City Council meeting of June 23, 2003.
 Seconded by Cook & carried by the following vote: AYES: Camp,
 Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None; ABSENT: Cook.
 So ordered.

Joan E. Ross, City Clerk

Glenna Graupmann, Senior Office Assistant